

UTAH WHOLESOME FOOD ACT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions of the Utah Wholesome Food Act.

Highlighted Provisions:

This bill:

- defines terms;
- designates "produce" as adulterated if it is in violation of certain provisions of the Federal Food Safety Modernization Act;
- expands the definition of "food establishment" to include farms;
- allows an authorized agent of the Department of Agriculture and Food to enter a farm for inspections under certain circumstances;
- provides that carriers are subject to regulation under the Utah Wholesome Food Act; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

4-5-102, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-5-103, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-5-105, as renumbered and amended by Laws of Utah 2017, Chapter 345

4-5-501, as last amended by Laws of Utah 2017, Chapter 42 and renumbered and amended by Laws of Utah 2017, Chapter 345 and last amended by Coordination Clause, Laws of Utah 2017, Chapter 345

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **4-5-102** is amended to read:

4-5-102. Definitions.

As used in this chapter:

(1) "Advertisement" means a representation, other than by labeling, made to induce the purchase of food.

(2) (a) "Color additive":

(i) means a dye, pigment, or other substance not exempted under the federal act that, when added or applied to a food, is capable of imparting color; and

(ii) includes black, white, and intermediate grays.

(b) "Color additive" does not include a pesticide chemical, soil or plant nutrient, or other agricultural chemical [~~which~~] that imparts color solely because of [~~its~~] the chemical's effect, before or after harvest, in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of any plant life.

(3) (a) "Consumer commodity" means a food, as defined by this act, or by the federal act.

(b) "Consumer commodity" does not include:

(i) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 et seq.;

(ii) a commodity subject to Title 4, Chapter 16, Utah Seed Act;

(iii) a meat or meat product subject to the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq.;

(iv) a poultry or poultry product subject to the Poultry Inspection Act, 21 U.S.C. Sec. 451 et seq.;

(v) a tobacco or tobacco product; or

(vi) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act, 27 U.S.C. Sec. 201 et seq.

(4) "Contaminated" means not securely protected from dust, dirt, or foreign or injurious agents.

(5) (a) "Farm" means an agricultural operation, under management by one entity, that grows or harvests crops.

(b) "Farm" does not include an entity that is exempt under 21 C.F.R. 112.4(a), 21

64 C.F.R. 112.5, or 21 C.F.R. 117.3.

65 ~~[(5)]~~ (6) "Farmers market" means a market where ~~[producers of food products sell]~~ a
66 producer of a food product sells only a fresh, raw, whole, unprocessed, and unprepared food
67 ~~[items]~~ item directly to the final consumer.

68 ~~[(6)]~~ (7) "Federal act" means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.
69 Sec. 301 et seq.

70 ~~[(7)]~~ (8) "Food" means:

71 (a) an article used for food or drink for human or animal consumption or the
72 components of the article;

73 (b) chewing gum or ~~[its]~~ chewing gum components; or

74 (c) a food supplement for special dietary use which is necessitated because of a
75 physical, physiological, pathological, or other condition.

76 ~~[(8)]~~ (9) (a) "Food additive" means a substance, the intended use of which results in the
77 substance becoming a component, or otherwise affecting the characteristics, of a food.

78 (b) (i) "Food additive" includes a substance or source of radiation intended for use in
79 producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or
80 holding food.

81 (ii) "Food additive" does not include:

82 (A) a pesticide chemical in or on a raw agricultural commodity;

83 (B) a pesticide chemical that is intended for use or is used in the production, storage, or
84 transportation of a raw agricultural commodity; or

85 (C) a substance used in accordance with a sanction or approval granted pursuant to the
86 Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq. or the Federal Meat Inspection Act,
87 21 U.S.C. Sec. 601 et seq.

88 ~~[(9)]~~ (10) (a) "Food establishment" means a grocery store, bakery, candy factory, food
89 processor, bottling plant, sugar factory, cannery, farm, rabbit processor, meat processor, flour
90 mill, cold or dry warehouse storage, or other facility where food products are manufactured,
91 canned, processed, packaged, stored, transported, prepared, sold, or offered for sale.

92 (b) "Food establishment" does not include:

93 (i) a dairy farm, a dairy plant, or a meat establishment, ~~[which]~~ that is subject to the
94 Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., or the Federal Meat Inspection

95 Act, 21 U.S.C. Sec. 601 et seq.; or

96 (ii) a farmers market.

97 ~~[(10)]~~ (11) "Label" means a written, printed, or graphic display on the immediate
98 container of an article of food.

99 ~~[(11)]~~ (12) "Labeling" means a label and other written, printed, or graphic display:

100 (a) on an article of food or ~~[its containers or wrappers]~~ the article of food's container or
101 wrapper; or

102 (b) accompanying the article of food.

103 ~~[(12)]~~ (13) "Official compendium" means the official documents or supplements to the:

104 (a) United States Pharmacopoeia;

105 (b) National Formulary; or

106 (c) Homeopathic Pharmacopoeia of the United States.

107 ~~[(13)]~~ (14) (a) "Package" means a container or wrapping in which a consumer
108 commodity is enclosed for use in the delivery or display of the consumer commodity to retail
109 purchasers.

110 (b) "Package" does not include:

111 (i) a package ~~[liners]~~ liner;

112 (ii) a shipping ~~[containers]~~ container or wrapping used solely for the transportation of a
113 consumer ~~[commodities]~~ commodity in bulk or in quantity to ~~[manufacturers, packers,~~
114 ~~processors, or wholesale or retail distributors]~~ a manufacturer, packer, processor, or wholesale
115 or retail distributor; or

116 (iii) a shipping ~~[containers]~~ container or outer ~~[wrappings]~~ wrapping used by a
117 ~~[retailers]~~ retailer to ship or deliver a consumer commodity to a retail ~~[customers]~~ customer, if
118 the ~~[containers and wrappings]~~ container and wrapping bear no printed information relating to
119 the consumer commodity.

120 ~~[(14)]~~ (15) (a) "Pesticide" means a substance intended:

121 (i) to prevent, destroy, repel, or mitigate a pest, as defined under Subsection
122 4-14-102(20); or

123 (ii) for use as a plant regulator, defoliant, or desiccant.

124 (b) "Pesticide" does not include:

125 (i) a new animal drug, as defined by 21 U.S.C. Sec. 321, that has been determined by

126 the United States Secretary of Health and Human Services not to be a new animal drug by
127 federal regulation establishing conditions of use of the drug; or

128 (ii) animal feed, as defined by 21 U.S.C. Sec. 321, bearing or containing a new animal
129 drug.

130 ~~[(15)]~~ (16) "Principal display panel" means that part of a label that is most likely to be
131 displayed, presented, shown, or examined under normal and customary conditions of display
132 for retail sale.

133 (17) "Produce" means a food that is a:

134 (a) fruit, vegetable, mix of intact fruits and vegetables, mushroom, sprout from any
135 seed source, peanut, tree nut, or herb; and

136 (b) raw agricultural commodity.

137 ~~[(16)]~~ (18) "Raw agricultural commodity" means a food in ~~[its]~~ the food's raw or
138 natural state, including all fruits that are washed, colored, or otherwise treated in ~~[their]~~ the
139 fruit's unpeeled, natural form prior to marketing.

140 ~~[(17)]~~ (19) "Registration" means the commissioner's issuance of a certificate ~~[by the~~
141 ~~commissioner]~~ to a qualified food establishment.

142 (20) "Sprout" means the shoot of a plant generally harvested when cotyledons are
143 undeveloped or underdeveloped and mature leaves have not emerged.

144 Section 2. Section **4-5-103** is amended to read:

145 **4-5-103. Adulterated food specified.**

146 (1) A food is adulterated:

147 ~~[(1)]~~ (a) if ~~[it]~~ the food bears or contains ~~[any]~~ a poisonous or deleterious substance in
148 a quantity that may ordinarily render ~~[it]~~ the food injurious to health; ~~[but in case the substance~~
149 ~~is not an added substance the food may not be considered adulterated under this Subsection~~
150 ~~(1)(a) if the quantity of the substance in such food does not ordinarily render it injurious to~~
151 ~~health;]~~

152 (b) ~~[(1)]~~ if ~~[it]~~ the food bears or contains ~~[any]~~ an added poisonous or added deleterious
153 substance ~~[other than one that is: (A) a pesticide chemical in or on a raw agricultural~~
154 ~~commodity; (B) a food additive; or (C) a color additive]~~ that is unsafe within the meaning of
155 Subsection 4-5-204(1); ~~[or]~~

156 ~~[(1)]~~ (c) except as provided in Subsection (3), if [it] the food:

157 (i) is a raw agricultural commodity; and
158 (ii) [it] bears or contains a pesticide chemical that is unsafe within the meaning of 21
159 U.S.C. Sec. 346a; [or]
160 ~~[(iii)]~~ (d) if ~~[it is or it]~~ the food is, bears, or contains ~~[any]~~ a food additive that is unsafe
161 within the meaning of 21 U.S.C. Sec. 348; ~~[provided that where a pesticide chemical has been~~
162 ~~used in or on a raw agricultural commodity in conformity with an exemption granted or~~
163 ~~tolerance prescribed under 21 U.S.C. 346a and the raw agricultural commodity has been~~
164 ~~subjected to processing such as canning, cooking, freezing, dehydrating, or milling the residue~~
165 ~~of such pesticide chemical remaining in or on such processed food shall, notwithstanding the~~
166 ~~provisions of Section 4-5-204 and this Subsection (1)(b)(iii), not be considered unsafe if such~~
167 ~~residue in or on the raw agricultural commodity has been removed to the extent possible in~~
168 ~~good manufacturing practice, and the concentration of such residue in the processed food when~~
169 ~~ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;]~~
170 ~~[(e)]~~ (e) if [it] the food consists in whole or in part of a diseased, contaminated, filthy,
171 putrid, or decomposed substance~~[-or];~~
172 (f) if [it] the food is otherwise unfit for food;
173 ~~[(d)]~~ (g) if [it] the food has been produced, prepared, packed, or held under unsanitary
174 conditions whereby [it] the food may have:
175 (i) become contaminated with filth~~[-];~~ or ~~[whereby it may have]~~
176 (ii) been rendered diseased, unwholesome, or injurious to health;
177 ~~[(e)]~~ (h) if [it] the food is, in whole or in part, the product of:
178 (i) a diseased animal ~~[or];~~
179 (ii) an animal that has died ~~[otherwise]~~ other than by slaughter~~[-];~~ or ~~[of]~~
180 (iii) an animal that has ~~[been]~~ fed upon the uncooked offal from a slaughterhouse;
181 ~~[(f)]~~ (i) if ~~[its]~~ the food's container is composed, in whole or in part, of ~~[any]~~ a
182 poisonous or deleterious substance that may render the contents injurious to health;
183 ~~[(g)]~~ (j) if [it] the food has been intentionally subjected to radiation, unless the use of
184 the radiation was in conformity with a rule or exemption in effect pursuant to Section 4-5-204,
185 or 21 U.S.C. Sec. 348; [or]
186 ~~[(h)]~~ ~~in]~~
187 (k) if the food:

188 (i) is a meat or meat [products are adulterated:] product; and
189 [(i) if such products are in casings, packages, or wrappers]
190 (ii) (A) is in a casing, package, or wrapper:
191 (I) through which [any] a part of [their] the casing, package, or wrapper's contents can
192 be seen; and
193 (II) [which, or the markings of which,] that is colored or has markings that are colored
194 [red or any other color], so as to be misleading or deceptive with respect to the color, quality,
195 or kind of [such products] food to which [they are] the color is applied; or
196 [(ii) (B) [if such products contain or bear any] contains or bears a color additive;
197 (I) if the food is produce and is in violation of a provision of 21 C.F.R. Part 112;
198 [(2)(a) if any] (m) if a valuable constituent has been, in whole or in part, omitted or
199 abstracted [therefrom; (b) if any] from a product and a substance has been substituted wholly
200 or in part [therefor];
201 [(c) (n) if damage or inferiority has been concealed [in any manner; or];
202 [(d) (o) if [any] a substance has been added [or], mixed, or packed [therewith] with a
203 product so as to:
204 (i) increase [its] the product's bulk or weight[; or];
205 (ii) reduce [its] the product's quality or strength; or
206 (iii) make [it] the product appear better or of greater value [than it is]; or
207 [(3) (p) if [it] the food:
208 (i) is confectionery[; and];
209 [(a) (ii) (A) has partially or completely imbedded [therein any] in the food a
210 nonnutritive object[; provided that this Subsection (3)(a) does not apply in the case of any
211 nonnutritive objective if, in the judgment of the department such object], unless the department
212 determines that the nonnutritive object:
213 (I) is of practical functional value to the confectionery product; and
214 (II) would not render the product injurious or hazardous to health;
215 [(b) (B) bears or contains [any] alcohol, other than alcohol [not in excess of .05% by
216 volume] derived solely from the use of flavoring extracts, that does not exceed .05% by
217 volume; or
218 [(c) (C) bears or contains [any] a nonnutritive substance[; provided, that this

219 ~~Subsection (3)(c) does not apply to], unless:~~

220 (I) the nonnutritive substance is a safe nonnutritive substance that is in or on the
221 confectionery [by reason of its use for some] for a practical functional purpose in the
222 manufacture, packaging, or storing of [such] the confectionery [if]; and

223 (II) the use of the nonnutritive substance does not promote deception of the consumer
224 or otherwise result in adulteration or misbranding in violation of this chapter.

225 ~~[(4)]~~ (2) The department may, for the purpose of avoiding or resolving uncertainty as to
226 the application of Subsection [(3)(c)] (1)(p)(ii)(C), issue rules allowing or prohibiting the use
227 of a particular nonnutritive [substances] substance.

228 (3) Notwithstanding the provisions of Section 4-5-204, the residue of a pesticide
229 chemical remaining in or on a processed food is not considered unsafe if:

230 (a) the pesticide chemical is used in or on a raw agricultural commodity in conformity
231 with an exemption granted or tolerance prescribed under 21 U.S.C. Sec. 346a;

232 (b) the residue of the pesticide chemical in or on the raw agricultural commodity is
233 removed to the extent possible in good manufacturing practice;

234 (c) the raw agricultural commodity is subjected to processing such as canning, cooking,
235 freezing, dehydrating, or milling; and

236 (d) the concentration of the residue in the processed food when ready to eat is no
237 greater than the tolerance prescribed for the raw agricultural commodity.

238 Section 3. Section **4-5-105** is amended to read:

239 **4-5-105. Inspection of premises and records -- Authority to take samples --**

240 **Inspection results reported.**

241 (1) An authorized agent of the department, upon presenting appropriate credentials to
242 the owner, operator, or agent in charge, may:

243 (a) enter at reasonable times ~~[any]~~ a factory, farm, warehouse, or establishment in
244 which food is manufactured, processed, packed, or held for introduction into commerce or after
245 introduction into commerce;

246 (b) enter ~~[any]~~ a vehicle being used to transport or hold food in commerce;

247 (c) inspect at reasonable times and within reasonable limits and in a reasonable manner
248 ~~[any]~~ a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and
249 unfinished materials, containers, and labeling located within ~~[it]~~ the factory, warehouse,

250 establishment, or vehicle;

251 (d) obtain samples necessary for the enforcement of this chapter ~~[so long as]~~ if the
252 department:

253 (i) pays the posted price for the sample if requested to do so; and

254 (ii) receives a signed receipt from the person from whom the sample is taken; and

255 (e) have access to and copy all records of carriers in commerce showing:

256 (i) the movement in commerce of ~~[any]~~ food;

257 (ii) the holding of food during or after movement in commerce; and

258 (iii) the quantity, shipper, and consignee of food.

259 (2) Evidence obtained under this section may not be used in a criminal prosecution of
260 the person from whom the evidence was obtained.

261 (3) ~~[Carriers may not be]~~ A carrier is subject to the other provisions of this chapter by
262 reason of ~~[their]~~ the carrier's receipt, carriage, holding, or delivery of food in the usual course
263 of business as ~~[carriers]~~ a carrier.

264 (4) ~~[Upon completion of]~~ After the inspection of a factory, warehouse, consulting
265 laboratory, or other establishment and ~~[prior to]~~ before leaving the premises, the authorized
266 agent making the inspection shall give ~~[to]~~ the owner, operator, or agent in charge a written
267 report ~~[in writing setting forth]~~ describing any conditions or practices observed by ~~[him]~~ the
268 agent during the inspection which, in ~~[his]~~ the agent's judgment, indicate that ~~[any]~~ a food in
269 the establishment:

270 (a) consists in whole or in part of ~~[any]~~ a filthy, putrid, or decomposed substance; or

271 (b) has been prepared, packed, or held under unsanitary conditions whereby ~~[it]~~ the
272 food may have become contaminated with filth or ~~[whereby it may have]~~ been rendered
273 injurious to health.

274 (5) A copy of the report required under Subsection (4) shall be sent promptly to the
275 department.

276 (6) If the authorized agent making the inspection of a factory, warehouse, or other
277 establishment has obtained ~~[any]~~ a sample in the course of the inspection, the agent shall give
278 to the owner, operator, or agent in charge:

279 (a) a receipt describing the samples obtained~~[-];~~ and

280 ~~[(7) When in the course of the inspection the officer or employee making the~~

281 ~~inspection obtains a sample of any food and]~~

282 (b) if an analysis is made of the sample for the purpose of ascertaining whether the
283 food consists in whole or in part of ~~[any]~~ a filthy, putrid, or decomposed substance or is
284 otherwise unfit for food, a copy of the results of the analysis~~[shall be furnished promptly to the~~
285 ~~owner, operator, or agent in charge]~~.

286 Section 4. Section **4-5-501** is amended to read:

287 **4-5-501. Cottage food operations.**

288 (1) For purposes of this chapter:

289 (a) "Cottage food operation" means a person who produces a cottage food product in a
290 home kitchen.

291 (b) "Cottage food product" means a ~~[non-potentially]~~ nonpotentially hazardous baked
292 good, jam, jelly, or other ~~[non-potentially]~~ nonpotentially hazardous food produced in a home
293 kitchen.

294 (c) "Home kitchen" means a kitchen:

295 (i) designed and intended for use by the residents of a home; and

296 (ii) used by a resident of the home for the production of a cottage food product.

297 (d) "Potentially hazardous food" means:

298 (i) a food of animal origin;

299 (ii) raw seed sprouts; or

300 (iii) a food that requires time or temperature control, or both, for safety to limit
301 pathogenic microorganism growth or toxin formation, as identified by the department in rule.

302 (2) The department shall adopt rules pursuant to Title 63G, Chapter 3, Utah
303 Administrative Rulemaking Act, as necessary to protect public health and ensure a safe food
304 supply.

305 (3) Rules adopted pursuant to Subsection (2) may not require:

306 (a) the use of a commercial ~~[surfaces]~~ surface such as a stainless steel ~~[counters or~~
307 ~~cabinets]~~ counter or cabinet;

308 (b) the use of a commercial grade:

309 (i) sink;

310 (ii) dishwasher; or

311 (iii) oven;

(c) a separate kitchen for the cottage food [~~production~~] operation; or

(d) the submission of plans and specifications before construction of, or remodel of, a cottage food production operation.

(4) The operator of a cottage food [~~production~~] operation shall:

(a) register with the department as a cottage food [~~production~~] operation before operating as a cottage food [~~production~~] operation;

(b) hold a valid food handler's permit; and

(c) package a cottage food product with a label, as specified by the department in rule.

(5) Notwithstanding the provisions of Subsections 4-5-301(1)(a) and (c), the department shall issue a registration to an applicant for a cottage food [~~production~~] operation if the applicant for the registration:

(a) pays the fees required by the department; and

(b) meets the requirements of this section.

(6) Notwithstanding the provisions of Section 26A-1-114, a local health department:

(a) does not have jurisdiction to regulate the production of food at a cottage food [~~production~~] operation operating in compliance with this section, as long as the products are not offered to the public for consumption on the premises; and

(b) does have jurisdiction to investigate a cottage food [~~production~~] operation in [~~any~~] an investigation into the cause of a [~~food-born~~] foodborne illness outbreak.

(7) A food service establishment as defined in Section 26-15a-102 may not use a product produced in a cottage food [~~production~~] operation as an ingredient in [~~any~~] a food that is prepared by the food establishment and offered by the food establishment to the public for consumption.